



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

April 23, 1996

Ms. Doreen E. McGookey  
Assistant City Attorney  
City of Dallas  
501 Police & Courts Building  
Dallas, Texas 75201

OR96-0594

Dear Ms. McGookey:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 38941.

The City of Dallas (the "city") received a request for copies of or access to the completed Internal Affairs Division ("IAD") investigation of Detective Daniel C. Shiderly and copies of or access to several other completed IAD investigations. You have submitted to this office for review the IAD file on Detective Daniel C. Shiderly and portions of the other IAD investigation files, labeled Exhibits 1-9.<sup>1</sup> You contend that the Shiderly file is excepted from required public disclosure by section 552.108. You assert sections 552.101, 552.107, and 552.108 to protect selected information in the other investigation files from disclosure.

We understand that Dallas is a civil service city under the Texas Local Government Code. Accordingly, portions of the requested information may be excepted from disclosure under section 143.089 of the Local Government Code. Section 552.101 of the Government Code excepts from disclosure information deemed confidential by statute, such as section 143.089. Section 143.089 contemplates two different types of personnel files, a police officer's civil service file that the police department is required to maintain, and an internal file that the police department may maintain for its own use.

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<sup>1</sup>Exhibit 6 is a representative sample of information related to sexual assaults. We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). Here, we do not address any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Local Gov't Code § 143.089(a), (g). In cases in which a police department takes disciplinary action against a police officer, it is required by section 143.089(a)(2) to place records relating to the investigation and disciplinary action in the officer's civil service file maintained under section 143.089(a). Such records are subject to release under chapter 552 of the Government Code. See Local Gov't Code § 143.089(f); Open Records Decision No. 562 (1990) at 6. However, information maintained in a police department's internal file pursuant to section 143.089(g) is confidential and must not be released. *City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946, 949 (Tex. App.--Austin 1993, writ denied).<sup>2</sup>

We are unable to determine whether the documents you submitted to us for review are part of the files maintained by the police department under section 143.089(g). If they are, the city must withhold the documents from disclosure under section 552.101 as information deemed confidential by statute. Nevertheless, we will address your arguments for exception from disclosure in the event that the documents submitted to this office are not part of the police department's section 143.089(g) files.

When applying section 552.108, this office distinguishes between cases that are still under active investigation and those that are closed. Open Records Decision No. 611 (1992) at 2. In cases that are still under active investigation, section 552.108 excepts from disclosure all information except that generally found on the first page of the offense report. See generally *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), writ *ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). Once a case is closed, information may be withheld under section 552.108 only if its release "will unduly interfere with law enforcement or crime prevention." See *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Attorney General Opinion MW-446 (1982); Open Records Decision Nos. 444 (1986), 434 (1986).

In this instance, you state that Detective Shiderly was accused of inadequately investigating an aggravated assault. A defendant has been charged with the assault, and the criminal case is pending. You state that the IAD investigation into Detective Shiderly's conduct is "closely intertwined with the pending criminal case," and "many of the same witnesses involved in the criminal case gave statements in the Internal Affairs investigation about matters that are directly related to the criminal investigation." Based on your statements, we assume that the IAD file on Detective Shiderly has become part of the police department's active investigation file on the related aggravated assault. Based on your assertions, we think that release of the IAD file could hinder prosecution of a related pending case. Thus, section 552.108 is applicable to the IAD file. You must release front page offense report information related to the aggravated assault, but you may withhold the remainder of the IAD file from disclosure pursuant to section 552.108.

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<sup>2</sup>We note that section 143.089(g) requires a police department that receives a request for information maintained in a file under section 143.089(g) to refer that person to the civil service director or the director's designee.

You have divided the documents from the other IAD investigation files into Exhibits 1-9. The IAD files that make up Exhibit 1 document investigations into the alleged failure of police officers to adequately respond to activated burglar alarms. Reports in these files note the location of the activated alarms and identify the occupants of the property at which the alarms were activated. You believe this information is made confidential by section 28(e) of article 4413(29bb), V.T.C.S., and is excepted from disclosure by section 552.101. Section 28(e) provides as follows:

Information that is contained in alarm system records held by a governmental body and that concerns the location of an alarm system, the name of the occupant of an alarm system location, or the type of alarm system used is confidential and may be disclosed only to the board or as otherwise required by state law or court order.

V.T.C.S. art. 4413(29bb), § 28(e). However, section 3(a)(17) of article 4413(29bb) provides that the article "does not apply to . . . [a] response to a burglar alarm or detection device by a law enforcement agency or by a law enforcement officer acting in an official capacity." Therefore, article 4413(29bb) does not make the locations of alarms or the identities of those occupying the properties where the alarms were activated confidential when the information is contained in law enforcement records. Consequently, the city may not withhold this information under section 552.101.

The IAD files designated as Exhibit 2 pertain to the way in which several police officers conducted themselves when dealing with juvenile offenders. The juvenile conduct described in these files took place during or prior to the year 1995. You contend that the information about juveniles is confidential per sections 58.005 and 58.106 of the Family Code and thus excepted from disclosure by section 552.101 of the Government Code. Section 51.14(d) of the Family Code was repealed by the Seventy-fourth legislature. Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 100, 1995 Tex. Sess. Law Serv. 2517, 2590. However, the repealing bill provides that "[c]onduct that occurs before January 1, 1996, is governed by the law in effect at the time the conduct occurred, and that law is continued in effect for that purpose." *Id.* § 106, 1995 Tex. Sess. Law Serv. at 2591. The applicable law in effect in 1995 was Family Code section 51.14 which provided, in pertinent part:

(d) Except as provided by Article 15.27, Code of Criminal Procedure, and except for files and records relating to a charge for which a child is transferred under Section 54.02 of this code to a criminal court for prosecution, the law-enforcement files and records [concerning a child] are not open to public inspection nor may their contents be disclosed to the public.

Act of May 22, 1993, 73d Leg., R.S., ch. 461, § 3, 1993 Tex. Gen. Laws 1850, 1852, *repealed by* Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 100, 1995 Tex. Sess. Law Serv. 2517, 2590. In Open Records Decision No. 181 (1977) at 2, this office held that former section 51.14(d) excepts police reports which identify juveniles or furnish a basis

for their identification. *See also* Open Records Decision No. 394 (1983) at 4-5 (applying former Fam. Code § 51.14(d) to “police blotter” and related information). You do not indicate that the information at issue here relates to charges for which the city transferred the juvenile under section 54.02 of the Family Code<sup>3</sup> to a criminal court for prosecution, nor that article 15.27 of the Code of Criminal Procedure<sup>4</sup> applies. Moreover, we do not understand any of the exceptions to former section 51.14(d) to apply here. *See* Act of May 22, 1993, 73d Leg., R.S., ch. 461, § 3, 1993 Tex. Gen. Laws 1850, 1852 (repealed 1995) (former Fam. Code § 51.14(d)(1), (2), (3)). Accordingly, we conclude that the city must withhold juvenile suspect statements, offense reports documenting alleged juvenile conduct, and all other information in Exhibit 2 that identifies or tends to identify juveniles. Such information is excepted from disclosure under section 552.101 of the Government Code as information deemed confidential by law.

The documents submitted as Exhibit 3 are medical records prepared by physicians. You cite section 5.08(b) of article 4495b, V.T.C.S., for the proposition that these medical records are confidential by law. Section 5.08(b) of the Medical Practice Act (the “MPA”), article 4495b, V.T.C.S., provides as follows:

(b) Records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician are confidential and privileged and may not be disclosed except as provided in this section.

As the documents at issue are medical records generated by physicians, the documents may be released only in accordance with the MPA. Open Records Decision No. 598 (1991). *See* § 5.08(c), (j).

Exhibit 4 is a psychological evaluation of a city police officer. You state that this document was “created by a psychologist” and is therefore confidential by law pursuant to section 611.002 of the Health and Safety Code. Section 611.002 provides in pertinent part:

(a) Communications between a patient and a professional,<sup>5</sup> and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential [Footnote added.]

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<sup>3</sup>Act of May 25, 1973, 63d Leg., R.S., ch. 544, § 1, 1973 Tex. Gen. Laws 1460, 1476-77, amended by Act of May 19, 1975, 64th Leg., R.S., ch. 693, §§ 15-16, 1975 Tex. Gen. Laws 2152, 2156-57 (adding subsecs. (m), (j), (k), (l)), amended by Act of May 8, 1987, 70th Leg., R.S., ch. 140, §§ 1-3, 1987 Tex. Gen. Laws 309 (amending subsecs. (a), (h), (j)).

<sup>4</sup>Act of May 22, 1993, 73d Leg., R.S., ch. 461, § 1, 1993 Tex. Gen. Laws 1850-51.

<sup>5</sup>Section 611.001 of the Health and Safety Code defines “professional” in part as “a person licensed or certified by this state to diagnose, evaluate, or treat any mental or emotional condition or disorder.”

(b) Confidential communications or records may not be disclosed except as provided by Section 611.004 or 611.0045.

Assuming that a professional, as defined by section 611.001, prepared the evaluation, sections 611.004 and 611.0045 of the Health and Safety Code govern the release of this information.

Exhibit 5 contains criminal history record information ("CHRI") generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center ("TCIC") is confidential. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety ("DPS") maintains, except that the DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See Gov't Code* § 411.083.

Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090 - .127. Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. *See* Open Records Decision No. 565 (1990). Furthermore, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. The information in Exhibit 5 is CHRI generated by TCIC and NCIC. Accordingly, the information is excepted from required public disclosure by section 552.101 of the Government Code.

Exhibit 6 consists of documents that refer to victims of sexual assault. You contend that the doctrine of common-law privacy, incorporated into the Open Records Act by section 552.101, protects the identities of these victims. Common-law privacy protects information if it is highly intimate or embarrassing such that its release would be highly objectionable to a reasonable person *and* the public has no legitimate interest in it. *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). In Open Records Decision No. 339 (1982) we concluded that a sexual assault victim has a common-law privacy interest which prevents disclosure of information that would identify her/him. Thus, the city must withhold from required public disclosure any information that would tend to identify a sexual assault victim. We have marked the documents in Exhibit 6 accordingly.

The document labeled Exhibit 7 is a communication between an attorney and his client. You believe that Exhibit 7 is excepted from disclosure by sections 552.101 and 552.107 of the Government Code. Section 552.107(1) excepts information that an attorney cannot disclose because of a duty to his client. In Open Records Decision No. 574 (1990), this office concluded that section 552.107 excepts from public disclosure only "privileged information," that is, information that reflects either confidential communications from the client to the attorney or the attorney's legal advice or opinions; it does not apply to all client information held by a governmental body's attorney. Open Records Decision No. 574 (1990) at 5. Section 552.107(1) does not except purely factual information from disclosure, Open Records Decision Nos. 574 (1990), 559 (1990), nor does it protect information gathered by an attorney as a fact-finder, Open Records Decision No. 462 (1987). As the document labeled Exhibit 7 consists entirely of an attorney's advice and opinion, Exhibit 7 is excepted from disclosure by section 552.107(1).

Exhibit 8 is a list of cellular phone numbers for members of the city police department. We assume that police officers are provided with cellular phones and phone numbers at the city's expense. You argue that the numbers are protected from disclosure by section 552.108. Section 552.108(b) excepts from disclosure "[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution." Internal records and notations of law enforcement agencies and prosecutors are excepted from disclosure when their release would unduly interfere with law enforcement and crime prevention. Open Records Decision No. 531 (1989) at 2 (quoting *Ex parte Pruitt*, 551 S.W.2d 706, 710 (Tex. 1977)). You state that release of the phone numbers would unduly interfere with law enforcement, because citizens would frequently call police officers on their cellular phones and create a situation in which the officers would be "constantly handling phone calls, instead of answering police calls for service." We agree that releasing the cellular phone numbers would unduly interfere with law enforcement. Therefore, the city may withhold the phone numbers from disclosure under section 552.108(b). However, the other information contained in Exhibit 8 must be released to the requestor.

Exhibit 9 is a polygraph examiner's summary of an examination he administered to a city police officer. You claim that section 19A of article 4413(29cc), V.T.C.S. makes the information in Exhibit 9 confidential. Section 19A provides:

(b) Except as provided by Subsection (d) of this section, a person for whom a polygraph examination is conducted or an employee of the person may not disclose to another person information acquired from the examination.

Section 19A(b) makes Exhibit 9 confidential in the city's hands, and therefore it is excepted from required public disclosure by section 552.101 of the Government Code.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, reading "Karen Hattaway". The signature is fluid and cursive, with a long horizontal line extending from the end of the name.

Karen E. Hattaway  
Assistant Attorney General  
Open Records Division

KEH/rho

Ref.: ID# 38941

Enclosures: Marked documents

cc: Mr. Todd Bensman  
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(w/o enclosures)